# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD E. LAFLEUR,

Defendant-Appellant.

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UNPUBLISHED
March 26, 1999

No. 203335
Recorder's Court
LC No. 96-006950

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Before: Kelly, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of one count of first-degree criminal sexual conduct (hereinafter "CSC I"), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and one count of second-degree criminal sexual conduct (hereinafter "CSC II"), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant was sentenced to serve concurrent terms of eight to twenty years' imprisonment for the CSC I conviction and five to fifteen years' imprisonment for the CSC II conviction. Defendant appeals as of right. We affirm.

## I. Victim's Competency

Defendant contends that he was denied a fair trial when the trial court found the victim competent to testify. This Court will not reverse the lower court's decision to permit a child witness to testify absent an abuse of discretion. *People v Coddington*, 188 Mich App 584, 597; 470 NW2d 478 (1991).

Defendant argues that the victim should never have been found competent to testify because she exhibited an inability to distinguish between the truth and a lie, and because her testimony was inconsistent. We disagree. The rules of evidence contain a presumption that every witness is competent to testify, "[u]nless the court finds after questioning . . . that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably." MRE 601.[1] With respect to a witness under the age of ten, MCL 600.2163; MSA 27A.2163 states in pertinent part:

> Whenever a child under the age of 10 years is produced as a witness, the court shall by an examination made by itself publicly, or separate and apart, ascertain to its own satisfaction whether such child has *sufficient intelligence and sense of obligation to tell the truth* to be safely admitted to testify . . . . [Emphasis added.]

As this Court observed in *Coddington*, "Once the trial court is satisfied that the child is competent to testify, a later showing of the child's inability to testify truthfully reflects on credibility, not competency." *Coddington, supra* at 597.

After reviewing the pertinent portions of the record, we do not believe that the trial court abused its discretion when it found the victim competent to testify. The trial court presented five different scenarios to the victim to determine if she was capable of telling the truth. In each instance, the victim correctly identified whether the statement was the truth or a lie. The victim also clearly indicated a sense of obligation to tell the truth. Any inconsistencies in her testimony bears on the issue of credibility, not competency. *Coddington, supra* at 597; *People v Jehnsen*, 183 Mich App 305, 307; 454 NW2d 250 (1990).

## II. Defendant's Evidentiary Challenges

### *A. Sufficiency of the Evidence*

Defendant argues that there was insufficient evidence presented at trial to support either conviction. "In reviewing the sufficiency of the evidence presented at trial in a criminal case, we view the evidence in a light most favorable to the prosecution and determine whether a rational factfinder could conclude that the essential elements of the crime were proved beyond a reasonable doubt." *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). To establish that defendant was guilty of CSC I under the circumstances of this case, the prosecution had to prove that defendant sexually penetrated the victim, and that the victim was under the age of thirteen at the time of the penetration. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a); *People v Garrow*, 99 Mich App 834, 837-838; 298 NW2d 627 (1980). To establish that defendant was guilty of CSC II under the circumstances of this case, the prosecution had to prove that defendant intentionally touched the victim's intimate parts for the purpose of sexual arousal or gratification, and that the victim was under the age of thirteen at the time of the contact. MCL 750.520c(1)(a); MSA 28.788(3)(1)(a); *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997).

Defendant does not assert that the prosecution failed to establish the age element of both crimes. Rather, defendant argues that there was insufficient evidence to establish that either sexual penetration or sexual contact occurred. We disagree. The victim testified that defendant had placed his penis inside her mouth on at least one occasion. The victim also testified that defendant had touched her genitals with his genitals on several occasions when she was five and six years old. Further, defendant's cousin testified that when he entered defendant's home on August 23, 1996, he found both defendant and the victim naked, with defendant standing in front of the victim who was situated on defendant's

bed. The cousin also testified that when he encountered the two, the victim withdrew from defendant, and defendant, who had an erection, tried to cover himself with a sheet, and exclaimed, "Oh, shit."

It is true that the victim's testimony was somewhat inconsistent. However, as the trial court noted, the victim's testimony was not the sole evidence presented against defendant. Particularly damaging to defendant was the testimony by defendant's cousin. We believe it is reasonable to infer from the cousin's testimony that some form of sexual contact between defendant and the victim did occur. Further, the cousin's testimony corroborates the victim's testimony, which itself provides direct evidence of sexual penetration and sexual contact. Therefore, after examining all the evidence presented at trial in a light most favorable to the prosecution, we conclude that a rational factfinder could find, beyond a reasonable doubt, that there indeed had been sexual penetration and sexual contact. *Terry*, *supra* at 452-453. Thus, there was sufficient evidence to support defendant's CSC I and CSC II convictions.

*B. Great Weight of the Evidence*

*C.*

Defendant also argues the verdict was against the great weight of the evidence. Again, we disagree. "'A new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result.'" *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998), quoting *State v LaDabouche*, 146 Vt 279, 285; 502 A2d 852 (1985). For the same reasons just stated, we conclude that the verdict was not against the great weight of the evidence.

Affirmed.

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

[1] MRE 601 also contains the caveat, "except as otherwise stated in these rules." None of these other exceptions are applicable in the case at hand.